



April 10, 2000

Ms. Linda Cloud
Executive Director
Texas Lottery Commission
P.O. Box 16630
Austin, Texas 78761-6630

OR2000-1387

Dear Ms. Cloud:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 134713.

The Texas Lottery Commission (the "commission") received a written request for all "documentation" pertaining to the requestor's "forced resignation/termination." You state that the commission has released much of the requested information. You seek to withhold, however, portions of certain documents that you contend are excepted from required public disclosure pursuant to section 552.101 of the Government Code¹ in conjunction with the Americans with Disabilities Act of 1990 (the "ADA"), 42 U.S.C. § 12101 *et seq.*

As this office noted in Open Records Decision No. 641 (1996),

Title I of the ADA and the EEOC regulations adopted pursuant to specific statutory authority provide for the confidentiality of medical condition and history information collected from applicants and employees. . . . Section 12112(d)(4)(C) provides that information "regarding the medical condition or history of any employee" obtained as part of a work-site based health program also must be maintained on

¹Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

separate forms, in separate files, and be kept confidential. *See also* 29 C.F.R. § 1630.14(d)(1) (providing that this information “*shall* be collected and maintained on separate forms and in separate medical files and be treated as a confidential medical record”) (emphasis added). As to information obtained from employees’ job-related medical examinations or medical inquiries, the interpretive rules make clear that medical condition and medical history information so obtained is subject to the same restrictions:

(c) *Examination of employees.* A covered entity may require a medical examination (and/or inquiry) of an employee that is job-related and consistent with business necessity. A covered entity may make inquiries into the ability of an employee to perform job-related functions.

(1) Information obtained under paragraph (c) of this section regarding the medical condition or history of any employee shall be collected and maintained on separate forms and in separate medical files and be treated as a confidential medical record

Id. § 1630.14.

The ADA allows certain types of medical information to be disclosed in order to ensure safety, proper accommodation of employees’ disabilities, and compliance with ADA provisions. Section 12112(d)(3)(B) of title 42 of the United States Code provides that information regarding medical condition or medical history may be disclosed as follows:

(i) supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

(ii) first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) government officials investigating compliance with this Act shall be provided relevant information on request.

Although section 12112(d)(3)(B) specifically addresses information obtained from applicants at the conditional job offer phase, these restrictions also are applicable to information about medical conditions and medical histories obtained from employees. 29 C.F.R. § 1630.14(c)(1)(i)-(iii).

We have reviewed the information at issue and generally agree that because the information you have highlighted pertains to commission employees' disabilities, all such information must be withheld from the public pursuant to the ADA. We have marked in red brackets the portions of the information at issue that must be withheld in conjunction with section 552.101 of the Government Code. The department must release the remaining information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

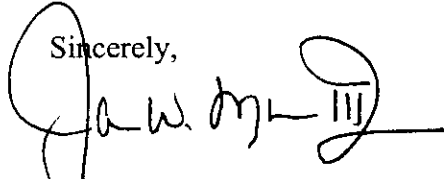
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is written in a cursive style with a large initial "J" and a stylized "M".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/RWP/ch

Ref: ID# 134713

Encl. Submitted documents

cc: Ms. Linda Whitehurst
P.O. Box 166941
Irving, Texas 75016
(w/o enclosures)